



ENTERED
12/09/2016

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE: § **CASE NO. 15-34109**
§
KTP BUILDERS, INC., § **CHAPTER 11**
§
DEBTOR § **Hearing: December 13, 2016 @ 10 a.m.**
§

**AGREED ORDER RESOLVING
DEBTOR'S OBJECTION TO PROOF OF CLAIM NO. 21
[Relates to Proof of Claim 21 and Document No(s) 151 and 168]**

TO THE HONORABLE BROWN, UNITED STATES BANKRUPTCY JUDGE:

Upon considering KTP Builders, Inc. ("Debtor" or "KTP") Objection to Proof of Claim No. 21 (the "Objection")[Docket No. 151] and the Texas Workforce Commission (the "TWC") response to same [Docket No. 168]; due notice of the Objection having been provided to the TWC and the parties entitled to such notice in accordance with the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules; and the parties having announced to the Court that they have reached an agreement resolving the Objection; and good a sufficient cause appearing therefore, the Court finds:

1. This Court has jurisdiction to consider the relief requested in the Objection.
2. The TWC timely filed a priority tax claim ("TWC Claim ")[Claim No. 21] in the amount of \$33,149.78.
3. An administrative hearing was conducted on August 31, 2016 to determine whether individuals who work for KTP (from time to time) are truly subcontractors, as asserted by Debtor, or are employees as envisioned by the rules promulgated by the TWC.
4. The Debtor participated in a hearing before the TWC on August 31, 2016 pursuant to 40 TAC § 815.113, commonly referred to as "Rule 13". On September 23, 2016, the TWC issued

its Decision on the Rule 13 hearing, finding that the workers referenced in the audit were “employees” of KTP and not subcontractors. KTP filed a Motion for Rehearing of that Decision. The Motion for Rehearing was denied on November 16, 2016, affirming the TWC’s September 23, 2016 Decision. At this point the Rule 13 appeal process becomes one akin to a “payment under protest”. Thus, the TWC Claim is itself final, and KTP’s only remedy is to pay under protest and then file a claim for a refund. If such refund is denied, then KTP is allowed to file a suit against the TWC in Travis County.

5. The Parties agree that the administrative process pursuant to Rule 13 is now final and thus, as a matter of administrative process, KTP must accept the findings of the Commission. Thus, the parties agree that Claim No. 21 Allowed in the amount of \$33,149.78.

6. KTP does not waive its rights under the administrative process set forth by Rule 13 adopted and enforced by the TWC. However, the Objection filed by KTP is rendered moot by the Decision of the TWC, subject to KTP’s administrative right of payment under protest.

7. Therefore, the Parties have agreed to entry of this order Allowing Claim No. 21 in its entirety, subject to KTP’s right to pay under protest the amount disputed therein.

ACCORDINGLY, IT IS HEREBY ORDERED THAT

1. The Objection is **DENIED**. It is further ordered that
2. The Proof of Claim filed by the Texas Workforce Commission [Claim No. 21] is hereby **ALLOWED** in the full amount, i.e., \$33,149.78. It is further ordered that
3. The entry of this Order shall not preclude KTP from seeking administrative remedies embodied in rules and regulations of the TWC as they relate to KTP’s Rule 13 Hearing.

SIGNED this _____ day of _____, 2016

DEC - 9 2016



THE HONORABLE LETITIA Z. PAUL
UNITED STATES BANKRUPTCY JUDGE

PROPOSED AND SUBMITTED BY:

/s/ Deborah Crain

Deborah L. Crain

State Bar No.: 24067319

Southern District of Texas Bar No.: 1114252

Email: deborah@deborahcrainlaw.com

10707 Corporate Drive, Suite 100

Stafford, Texas 77477

Telephone: (281) 565-5777

Telecopier: (281) 565-6222

ATTORNEY FOR KTP BUILDERS, INC.

/s/ Kimberly A. Walsh

Kimberly A. Walsh

Texas Bar No. 24039230

Southern District of Texas Bar No. 36315

Assistant Attorney General

Bankruptcy & Collections Division MC 008

P. O. Box 12548

Austin, Texas 78711-2548

E-mail: Kimberly.Walsh@texasattorneygeneral.gov

Telephone: (512) 475-4863

Telecopier: (512) 936-1409

**ATTORNEY FOR TEXAS WORKFORCE
COMMISSION**